

SUBCOMMITTEE NO. 2

Outcomes

Alan Lowenthal, Chair
Darrell Steinberg
Dave Cogdill



Monday, May 12, 2008
10:00 a.m.
Room 112

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Resources—Environmental Protection—Energy

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Vote-Only Calendar

Budget Balancing Reductions

Org Code	Description	(000) 2007-08	(000) 2008-09	GF Remaining (000)	Total Program Budget (000)
0555	Secretary for Environmental Protection - Support	-100	-209	1,884	14,739
3940	SWRCB - Water Quality	0	-3,659	35,400	726,940
3940	SWRCB - Water Rights	0	-390	3,567	12,616
3940	SWRCB - Administration	0	-253	2,278	21,141
3960	Toxics - Site Mitigation and Brownfield Use	-1,250	-2,498	22,483	110,192
3960	Toxics - Science, Pollution Prevention, and Technology	0	-34	307	13,990
3960	Toxics - Administration	-50	-96	866	33,240
3980	OEHHA - Health Risk Assessment	-100	-956	8,601	18,318

Staff Recommendation: Staff recommends that the Subcommittee accept the reductions shown in the chart above.

Action: Accepted the Governor's budget balancing reductions shown in the chart above.

Vote: 3-0

3900 Air Resources Board

1. Department of Justice Costs for Defending Lawsuits Against California Air Quality Programs

Background. The nature of the lawsuits filed against the Air Resources Board (ARB) have changed over the last several years from disagreement over ARB's authority to pass regulations to broad-scale factual challenges. These lawsuits challenging facts upon which regulations are built take a great deal of staff time, since they require extensive discovery, expert witnesses, and other resource-intensive efforts.

The Department of Justice (DOJ) conducts all of ARB's lawsuits on the department's behalf. In 2000-01, the DOJ staff worked a total of 3,722 hours on ARB's litigation. In 2005-06, the DOJ staff worked 14,115 hours on ARB's litigation. Typically lawsuits are filed when the regulation is final, which allows for estimates of future workload. DOJ estimates that there is a lag time of 10-12 months between the time the ARB Board votes to develop regulations and when those regulations are final. In 2007, the ARB Board was set to vote on 27 different regulations.

Governor's Budget. The Governor's Budget proposes \$1,851,000 from the Motor Vehicle Account for reimbursing the Department of Justice for the increased litigation workload and costs associated with ARB's schedule of regulations to be adopted.

Staff Recommendation. Staff recommends that the Subcommittee approve the budget proposal.

Action: Approved as budgeted

Vote: 2-1 (Cogdill)

2. Smog Reduction Strategy – Carl Moyer Air Quality Incentive Program

Background. The Carl Moyer Program began in 1998 to reduce smog-forming pollution from existing large diesel engines in trucks. Since its start, the Carl Moyer Program has grown to include on-road heavy-duty fleet modernization, off-road equipment replacement, and light-duty vehicle scrap and repair. The Carl Moyer Program is an incentive program that provides financial assistance for projects that clean up equipment or vehicles early or beyond regulatory requirements.

In the last three years, the Air Resources Board (ARB) had implemented many new regulations dealing with vehicle emissions. Since the Carl Moyer Program only funds projects that are surplus to regulatory requirements, certain previously eligible projects are no longer eligible because they are no longer surplus above requirements. As a result, the Carl Moyer Program guidelines have become more sophisticated and there is an increased need to develop innovative methods to streamline the delivery of funds to applicants and to accurately track projects to ensure accountability and ability to quantify progress.

Currently, the total state and local air district funding for the program is up to \$145 million annually. The state contributes \$90 million of this amount, but is responsible for oversight of the total amount of Carl Moyer funds.

In 2007, the Legislature changed the Carl Moyer Program statute to allow the Air Resources Board to use up to 4 percent of the state-funding portion of Carl Moyer funds for administration. Currently, 24 positions work on the Carl Moyer Program at ARB.

Governor's Budget. The Governor's Budget proposes a redirection of \$533,000 in Air Pollution Control Funds within the Carl Moyer program to pay for five new permanent positions to conduct program implementation.

Staff Recommendation. Staff recommends that the Subcommittee approve the budget proposal.

Action: Approved as budgeted

Vote: 2-1 (Cogdill)

3. Haagen-Smit Laboratory Seismic Retrofit

Increased Project Cost. The project cost has increased due to the National Earthquake Hazards Reduction Program (NEHRP) maps changing after the original seismic criteria was developed. The structural engineering firm developed the original criteria using the 2000 NEHRP maps. Upon subsequent peer review by an independent structural engineering firm, it was noted that the maps had been updated in 2005, changing the structural design criteria.

Finance Letter. The Governor submitted a finance letter to increase by \$491,000 from the Air Pollution Control Fund the construction appropriation for the Haagen-Smit Laboratory Seismic Retrofit project.

Staff Recommendation. Staff recommends that the Subcommittee accept the finance letter.

Action: Accepted finance letter

Vote: 3-0

4. Zero Emission Vehicle and Infrastructure Implementation Support Trailer Bill

Trailer Bill Language. The Governor's proposed trailer bill language would add the following to the Health and Safety Code Section 43022.5:

The state board shall select projects for zero-emission vehicle leases or purchases and zero-emission vehicle infrastructure for the purpose of implementing any program to encourage

the use of zero-emission vehicles through a competitive grant process that includes a public bidding process.

Staff Recommendation. Staff recommends that the Subcommittee reject the trailer bill.

Action: Rejected trailer bill

Vote: 3-0

3910 California Integrated Waste Management Board

1. Increase Federal Authority

Background. The National Environmental Information Exchange Network (NEIEN) is a USEPA effort to make environmental data more accessible to the public and policy makers. The NEIEN translates data into a single language, XML, per defined standards. This information exchange strategy allows data to be pulled from numerous platforms and be converted to a standard format so that it is accessible not just to other state agencies but also other states. The USEPA is providing grants to states for work required to join the NEIEN. The California Integrated Waste Management Board is performing administrative functions and serving as the formal grant recipient on behalf of CalEPA.

Governor's Budget. The Governor's Budget proposes \$200,000 from the Federal Trust Fund for the development of the National Environmental Information Exchange Network.

Staff Recommendation. Staff recommends that the Subcommittee approve the budget proposal.

Action: Approved as budgeted

Vote: 3-0

2. Temporary Permitting of Non-Permitted Facilities

Background. The California Integrated Waste Management Board (CIWMB) does not require solid waste facilities permits for recycling facilities that consistently recycle at least 90 percent by weight of the material they receive and which have material that is less than one percent putrescible. However, with the change from multi-stream recycling (with separate bins for each material) to single-stream recycling (with one bin for all recyclable materials) the recycling materials are being contaminated more with trash. Thus, many recycling centers that previously did not need solid waste facilities permits now need them.

AB 1473 (Feuer, 2007) requires the CIWMB to adopt emergency regulators to allow recyclers to keep operating while their solid waste facilities permits are being processed.

Governor's Budget. The Governor's Budget proposes \$157,000 from the Integrated Waste Management Account for two limited-term positions to implement AB 1473.

Staff Recommendation. Staff recommends that the Subcommittee approve the budget proposal.

Action: Rejected budget proposal

Vote: 3-0

3. Pharmaceutical Drug Waste Management and Disposal

Background. Household pharmaceuticals currently do not have a safe disposal method in California. Since there are very limited drop-off locations for household prescription drugs, most consumers throw their old medications in the trash. Hazardous waste facilities do not have to accept pharmaceutical drug waste, because it is not classified as hazardous waste. Also, receiving pharmaceuticals requires more work from hazardous waste facilities which must then request that the police retrieve any opiate prescriptions.

SB 966 (Simitian and Kuehl, 2007) requires the CIWMB to develop model programs for the collection of household pharmaceutical drug waste. SB 966 also requires the CIWMB to report to the Legislature, by December 2010, on the success of those programs and make recommendations toward a statewide program. CIWMB is already directing internal resources in order to meet the timeline mandated by SB 966.

Governor's Budget. The Governor's Budget proposes \$79,000 from the Integrated Waste Management Account for one position to implement SB 966.

Staff Recommendation. Staff recommends that the Subcommittee approve the budget proposal.

Action: Rejected budget proposal

Vote: 3-0

3930 Department of Pesticide Regulation

1. Implementation of Volatile Organic Compound Regulations

Background. Volatile organic compounds (VOC) and nitrogen oxides react with sunlight to create ozone. Ground level ozone can damage lung tissue, cause respiratory illness, and harm farm crops. Of the approximately 5,000 agricultural and structural pesticide products currently used, about 85 percent contain some VOCs and contribute to California's air quality problems.

Under the federal Clean Air Act, each state must have an approved State Implementation Plan (SIP) to meet federal air quality standards, including the standard for ozone. Under the SIP, the Department of Pesticide Regulation (DPR) committed to reduce VOC emissions from agricultural and commercial structural applications of pesticides by specified amounts within specified time periods for the nonattainment areas that do not meet the ozone standard. Due to controls that DPR has put into place so far, two out of the five nonattainment areas now meet their VOC emission reduction goals for pesticides. However, these controls were dependent on voluntary efforts by the regulated industry.

Court Order. The U.S. District Court has ordered DPR to issue regulations to reduce VOC emissions. These regulations were supposed to be completed in January 2008. These new regulations will require manufacturers of non-fumigant pesticides to reformulate products so that they emit less VOCs, mainly by changing the solvents in them. The reduction of VOC emissions from fumigants must be achieved through low emission application methods or restrictions on the frequency or amounts applied.

This Proposal. DPR will track and evaluate emissions from pesticide use, develop and implement allowance schemes, develop and evaluate emission mitigation measures, evaluate data submitted by registrants, and take additional pesticide product registration actions. In addition, DPR anticipates increased workload at the county level to validate field locations and acreage on allowance requests, track emissions usage allowances, conduct field inspections, and follow up on permit appeals and complaints. To support the 12 counties in the three nonattainment areas, DPR would provide \$1.29 million in local assistance, and another \$250,000 in one-time funds for enhancements to county pesticide use report data systems.

Governor's Budget. The Governor's Budget proposes \$2,622,000 from the Pesticide Regulation Fund for 11 positions to implement regulations that reduce volatile organic compound emissions from pesticides to attain national air quality standards in California and to comply with a federal court order.

Staff Recommendation. Staff recommends that the Subcommittee approve the budget proposal.

Action: Approved as budgeted

Vote: 2-1 (Cogdill)

2. Legal Clerical Workload

Background. Currently, the Department of Pesticide Regulation (DPR) has a nonclerical-to-clerical ratio of 31:1. In the past several months, DPR has seen increased administrative enforcement actions at the department level; increased appeals from County Agricultural Commissioner (CAC) enforcement actions, both agricultural and structural; and increased need to interface with other CalEPA agencies to coordinate with them and assist them in meeting their directives.

DPR has seen increased clerical workload from a new regulation, the Enforcement Response Policy, which requires an enforcement response from a CAC each time a violation occurs. Also, the Enforcement Response Policy requires increased fines, which can be appealed to the Director of DPR. The DPR receives appeals and information requests related to the Enforcement Response Policy, which became a regulation on November 30, 2006.

DPR has seen an increased number of challenges to restricted materials permits, which are required whenever agricultural application of restricted pesticides will be made. Also, DPR investigates all cases that involve the unregistered sale of pesticides. In the last three years, the number of these cases has increased from 120 annually to 159 annually.

Governor's Budget. The Governor's Budget proposes \$65,000 from the Pesticide Regulation Fund for one position to improve legal clerical support and address increased workload.

Staff Recommendation. Staff recommends that the Subcommittee approve the budget proposal.

Action: Rejected budget proposal

Vote: 3-0

3. Information Technology: Compliance with Security and Accessibility Requirements

Background. The Department of Pesticide Regulations (DPR) collects extensive data on pesticide action ingredient and pesticide products. This data should be catalogued and stored to make it accessible not only to DPR staff, but also to other governmental agencies, county agricultural commissioners, registrants, licensees, pesticide users, scientists, the media, other stakeholders, and the public. Various computer programs and data bases, developed by DPR staff in all branches, house this data, which include personal, sensitive, and confidential information on employees, licensees, registrants, citizens, organizations, and DPR programs.

In September 2002, the Department of Finance ordered departments to verify information security controls. In addition, the eServices Office in January 2007 issued its Web Site Development Policy requiring new standards of accessibility and usability for internet sites.

Governor's Budget. The Governor's Budget proposes \$188,000 from the Pesticide Regulation Fund for one permanent position and one limited-term position to assist with increasing technology control agency requirements.

Staff Analysis. Given the state's current fiscal crisis, expanding existing information technology branches is not critical.

Staff Recommendation. Staff recommends that the Subcommittee reject the budget proposal.

Action: Rejected the budget proposal

Vote: 3-0

4. Administrative Services Requirements

Background. The Department of Pesticide Regulations (DPR) is supposed to issue Policy, Procedural, and Management Memoranda for all Department of Food and Agriculture administrative policies. This project was started in 1994. A 1999 Financial Integrity and State Managers Accountability (FISMA) audit found that the Department of Pesticide Regulation did not have an adequate system to establish and maintain current administrative policies and procedures. Though DPR initially had a position to work on the administrative policies, that position was lost in the 2003 budget positions sweep.

During the 2006 FISMA audit, the Assistant Director of Administrative Services Division was verbally warned that lack of progress on the administrative policies and procedures project continues to be a problem. In order to work on this and other projects, analytical staff are having to spend their time on administrative tasks such as copying, faxing, and contracts tracking.

Governor's Budget. The Governor's Budget proposes \$175,000 from the Pesticide Regulation Fund for 2.5 positions for the areas of administrative policies and procedures and clerical assistance.

Staff Analysis. Given the state's current fiscal crisis, expanding existing administrative workforce is not recommended.

Staff Recommendation. Staff recommends that the Subcommittee reject the budget proposal.

Action: Rejected budget proposal

Vote: 3-0

3940 State Water Resources Control Board

1. CalTRANS Storm Water Program Implementation

Angora Fire. In June 2007 the Angora Fire burned approximately 3,100 acres of Upper Truckee River watershed. The wildfire burned steep sloping undeveloped forest lands and destroyed more than 250 homes in South Lake Tahoe. Runoff from highly erosive terrain in the burned area terrain draining to Angora Creek could have significant effects on Lake Tahoe.

New Projects. CalTRANS intends to spend \$500 million over the next five years to implement 83 Environmental Improvement Projects involving state highways in the Lake Tahoe Basin. The Water Board currently has 0.3 position overseeing CalTRANS projects throughout the Lake Tahoe region. The department is requesting additional staff to provide erosion control and storm water treatment project review, inspections, and compliance activities, including traction

abrasive activity oversight. The Lahontan Water Board intends to quantify lake clarity improvements that result from implementation activities.

Governor's Budget. The Governor's Budget proposes \$75,000 from Reimbursements and one position to oversee CalTRANS project implementation and management activities in the Lake Tahoe Basin.

Staff Recommendation. Staff recommends that the Subcommittee approve the budget proposal.

Action: Approved as budgeted

Vote: 2-1 (Cogdill)

2. Environmental Reviews for San Diego County Transportation Projects and San Diego Water Authority

Background. The Regional Water Board in San Diego does not have the staff to participate in scoping meetings and other pre-project planning activities and does not review environmental documents prepared pursuant to the California Environmental Quality Act (CEQA) prior to the permitting process. As a result, the water quality impacts of a project are first addressed during the Regional Water Board's permitting process, after most of the project planning and design work has been completed. Consequently, project modifications necessary to reduce or eliminate water quality impacts or provide mitigation become highly contentious and result in project delays.

Proposal. The San Diego County Association of Governments (SANDAG) and the San Diego County Water Authority have requested to pay for the positions at the State Water Resources Control Board that would conduct environmental reviews for transportation and water supply projects in San Diego County. Paying for the positions ensures that the permit review moves through the agency in an expedited manner. SANDAG and the San Diego County Water Authority are already paying for the 1.1 existing positions as limited-term requested in this proposal.

Governor's Budget. The Governor's Budget proposes \$205,000 in Reimbursement Authority and 2.6 positions (1.1 limited-term staff and 1.5 new permanent positions) to conduct and follow up on environmental reviews for transportation and water supply projects in San Diego County.

Staff Recommendation. Staff recommends that the Subcommittee approve the budget proposal.

Action: Approved as budgeted

Vote: 3-0

3. Leviathan Mine Litigation Defense

Background. The State of California owns Leviathan Mine, a former hard rock and sulfur mine. Currently, acid mine drainage from Leviathan Mine is discharging highly acidic water to Leviathan and Alpine Creeks. Cleanup of the mine waste may cost up to \$100 million, and the potential natural resources damages from runoff are unknown. In addition, the regional water board, Lahontan Water Board, has operated some of the cleanup systems at Leviathan and has potential liability associated with those activities.

The Atlantic Richfield Company's (ARCO) predecessors operated the Leviathan Mine, and now ARCO has responsibility for its predecessors' waste discharges at that time. In 1983, ARCO and Lahontan Water Board entered into a Settlement Agreement and Release whereupon the Lahontan Water Board presumably agreed to take over certain aspects of the Leviathan Mine site remediation in exchange for \$2,337,000 paid by ARCO. In 1984, the State purchased the Leviathan Mine from ARCO.

Arco contends that the State breached a 1983 settlement agreement in which the Lahontan Water Board released ARCO from certain claims concerning the Leviathan Mine. The claims are based on costs ARCO has incurred to comply with the United States Environmental Protection Agency orders or payments to natural resources damages trustees.

Impact on the State. If a court rules against the State in this case, the State could be found responsible for all past and future costs associated with Leviathan Mine cleanup and associated natural resources damages. The cleanup costs are estimated at \$70-100 million. The full costs of the projects will not be known until 2010, when the United States Environmental Protection Agency will require a formal cleanup plan to be submitted.

Governor's Budget. The Governor's Budget proposes \$961,000 General Fund for 2008-09 and \$1,211,000 General Fund for 2009-10 for payment to the Attorney General's Office for defense costs from a lawsuit filed by ARCO regarding the cleanup of mine waste at Leviathan Mine.

Staff Recommendation. Staff recommends that the Subcommittee approve the budget proposal.

Action: Approved as budgeted

Vote: 2-1 (Cogdill)

4. Wetlands Program – Protection and Regulatory Compliance

Background. The Porter-Cologne Water Quality Control Act gives broad authority to the State and Regional Water boards to regulate discharges of dredged and fill material and other waste discharges to protect the quality of waters and wetlands of the State. The flood projects the state is undertaking with the Proposition 1E and Proposition 84 funding will involve dredged and fill discharges potentially impacting streams, wetlands, and riparian areas. Without the benefit of the U.S. Army Corps of Engineers' site-specific technical review and analysis, the State must assume the full regulatory burden for dredged and fill material.

Program Augmentation. The requested program augmentation would:

- Allow management of increased workload pressures due to recent U.S. Supreme Court decisions that have reduced the scope of federal wetlands jurisdiction and protection, leaving more of the burden on the State;
- Allow for a more thorough California Environmental Quality Act (CEQA) project review and comment by staff on water quality and wetland protection measures;
- Improve customer service by providing more predictable permitting outcomes with consistent and clear compliance conditions;
- Improve effectiveness in wetland condition assessments and monitoring;
- Reduce occurrences of non-permitted discharge activity by increased surveillance, monitoring, and coordination with stakeholder groups and agencies; and
- Allow for improvements to an existing information management system.

Governor's Budget. The Governor's Budget proposes \$202,000 from the Waste Discharge Permit Fund and two positions for compliance monitoring.

Staff Recommendation. Staff recommends that the Subcommittee approve the budget proposal.

Action: Approved as budgeted

Vote: 2-1 (Cogdill)

5. Underground Storage Tank Cleanup Fund Augmentation

Background. The State Water Board administers the Underground Storage Tank Cleanup Fund (USTCF), established in 1990. The underground storage tanks are the gasoline tanks stored underground at gas stations. The USTCF is in essence an insurance program supported by the underground storage tank owners who pay a fee for coverage should they have a leak from their underground storage tank. The USTCF provides up to \$1.5 million in reimbursements per occurrence to petroleum underground storage tank owners and operators. These funds pay for the investigation and cleanup of unauthorized petroleum releases. Funds committed to a project but not used within three years revert back to the fund. The program is scheduled to sunset in January 1, 2011.

Governor's Budget. The Governor's Budget proposes \$10.2 million in previously reverted one-time funds from the Underground Storage Tank Cleanup Fund for accelerated reimbursement of underground storage tank cleanups. Of the requested amount, \$200,000 is for unused funds for the Orphan Site Cleanup Program to provide financial assistance to eligible applicants for the cleanup of brownfield sites contaminated by leaking petroleum underground storage tanks where there is no financially responsible party.

Staff Recommendation. Staff recommends that the Subcommittee approve the budget proposal.

Action: Approved as budgeted

Vote: 3-0

6. Angora Fire

Angora Fire. In July 2007, the Angora Fire in Lake Tahoe burned approximately 3,100 acres of forested and subdivided lands. The fire destroyed 242 homes and damaged an additional 35 homes. The resulting damage to the watershed has the potential to significantly impact water quality and other important forest resources. The Water Board, the Tahoe Regional Planning Agency, and CalFIRE have initiated actions to assist landowners in the recovery effort, including making available simplified processes for removal of damaged or destroyed trees on private land. Forestry activities have the potential to cause significant impacts to water quality, including sediment and nutrient discharges to surface water and damage to sensitive riparian habitat.

Current Activities. The Lake Tahoe Environmental Improvement Program (EIP) was created to achieve and maintain environmental thresholds that protect Lake Tahoe's unique resources. The EIP has guided the State's funding of projects in the area. In response to the wildfire threat, federal, state, and local agencies have developed a basin-wide Draft Fuels Management Plan to coordinate the implementation of Community Wildfire Protection Plans over a ten-year period. During this ten-year period, 48,800 acres would be treated. This is a four-fold increase over the current annual acreage treated.

Governor's Budget. The Governor's Budget proposes \$100,000 from General Fund and one position for planning and regulatory oversight of increased and accelerated fuel reduction activities on federal, state, and private lands in order to reduce the threat of future wildfire in the Lake Tahoe Basin.

Staff Recommendation. Staff recommends that the Subcommittee approve the budget proposal.

Action: Rejected budget proposal

Vote: 2-1 (Cogdill)

7. Water Demand Management Measures

Urban Water Management Plans. Urban water suppliers (serving more than 3,000 customers) are required to prepare and adopt urban water management plans every three years. These plans describe and evaluate sources of water supply, efficient uses of water, and demand management measures. Additionally, these plans describe an implementation strategy and schedule, and other relevant information and programs.

AB 1420. AB 1420 (Laird, 2007) requires the conditioning of grants or loans made to an urban water supplier by the State Water Resources Control Board (SWRCB) on the implementation of

the demand management measures as described in the applicants' Urban Water Management Plan. The concern was that many urban water suppliers had failed to implement these water demand management measures. The SWRCB believes that additional efforts to condition future grants and loans on eligibility requirements will likely promote more water conservation in California.

Governor's Budget. The Governor's Budget proposes \$126,000 from the Water Recycling Subaccount and 0.9 positions to implement AB 1420.

Staff Recommendation. Staff recommends that the Subcommittee approve the budget proposal.

Action: Approved as budgeted

Vote: 2-1 (Cogdill)

8. AB 1481 Implementation – General Permit for the Use of Recycled Water for Landscape Irrigation

Background. Recycled water is treated wastewater that is reused for other purposes, such as irrigation of parks, golf courses, and freeway landscaping. Recycled water is an important component of California's water supply, but if not treated and managed properly, it can degrade water supplies and threaten public health. The State Water Resources Control Board (SWRCB) is in the process of developing a revised statewide policy for recycled water use. The statewide policy will provide much of the basis necessary for the development of the statewide permit for use of recycled water for landscape irrigation.

AB 1481. AB 1481 (De La Torre, 2007) requires the SWRCB to complete or initiate the following programmatic and administrative tasks:

- Prepare and adopt the permit for use of recycled water for landscape irrigation (permit);
- Prepare and adopt a California Environmental Quality Act (CEQA) document that supports the adoption of the permit;
- Establish a new position designated as a "recycled water ombudsperson" to coordinate and facilitate the implementation of the permit;
- Hold at least one workshop and consider comments from interested parties and the Regional Water Boards during the development of the permit; and
- Establish a reasonable schedule of fees to pay for the costs incurred to implement, develop, and administer the bill's requirements.

Governor's Budget. The Governor's Budget proposes \$850,000 from the Waste Discharge Permit Fund (\$600,000 one-time, \$250,000 on-going) and two positions for adopting and implementing a general permit for the use of recycled water for landscape irrigation.

Staff Recommendation. Staff recommends that the Subcommittee approve the budget proposal.

Action: Rejected budget proposal

Vote: 3-0

9. The State Water Pollution Control Revolving Fund Administrative Fund

Background. AB 1742 (2007) created a new State Water Pollution Control Revolving Fund Administration Fund (SRF Administration Fund). This fund is intended to provide the support services for the State Water Pollution Control Revolving Fund Program. This program assists in the construction of facilities and implementation measures necessary to address water quality problems and to prevent pollution of the waters of the state.

Governor's Budget. The Governor's Budget proposes \$5,532,000 from the Water Pollution Control Revolving Fund Administrative Fund and a redirection of 32 positions to the new administrative fund. The positions would all be working on the same tasks as before, but from a new funding source.

Staff Recommendation. Staff recommends that the Subcommittee approve the budget proposal.

Action: Approved as budgeted

Vote: 3-0

11. Instream Flow Contracts

Background. AB 2121 (2004) requires the State Water Resources Control Board to adopt principles and guidelines for maintaining in stream flow in northern California coastal streams as part of state policy for water quality control, for the purposes of water right administration. In May 2006, the SWRCB contracted with Stetson Engineers to assist with the development of the proposed policy. The contract requires Stetson Engineers to evaluate the technical bases and rationale behind existing draft guidelines and other alternative policy criteria; and assist with the development of the proposed policy and the environmental documents describing the potential environmental impacts of the proposed policy.

Required work from the contractor was late several times during the policy development process. The SWRCB has now received the policy document from the contractor, and the policy has been released for scientific and scientific peer review. Several of the primary reviewers and stakeholders have requested more time to review the document. In order to provide the time requested, the contract appropriation must be extended.

Finance Letter. The Governor submitted a finance letter proposing extension of liquidation period until June 30, 2009 for item 3940-490, originally appropriated by item 3940-001-0235, Budget Act of 2005.

Staff Recommendation. Staff recommends that the Subcommittee accept the finance letter.

Action: Accepted the finance letter

Vote: 2-1 (Cogdill)

3960 Department of Toxic Substances Control

1. BKK Facility Investigation and Field Oversight

Background. The BKK landfill operated from 1963 to 1987. The BKK landfill is by all current measures the largest single depository of hazardous waste in the State. It is located in a highly populated area of Los Angeles County with many homes located within a few hundred feet of the hazardous waste landfill. Records indicate that from 1972 through 1984 approximately 12.1 million tons of liquid and solid hazardous waste, in addition to non-hazardous waste, were placed in BKK.

In 2004 BKK notified the Department of Toxic Substances Control (DTSC) that it no longer had the financial resources to continue post-closure work. DTSC initiated an emergency response action in November to maintain this landfill, its support systems, and to carry out some substantial critical facility repairs. By July 15, 2007, the State had spent approximately \$8 million on facility repairs at the BKK landfill.

Proposal. The Governor's request is for:

- \$500,000 in external contract funds for a preliminary work plan to conduct a comprehensive investigation to fully characterize the site, including assessing the risk posed by the site to human health and the environment. The contractor deliverables will lead to options for short term solutions and decisions that can be made for the clean up, design, and construction.
- Two positions to manage the scoping step of the contractor preliminary work plan for the investigation and provide daily oversight on-site of the emergency repairs and interim upgrades of failing equipment conducted by construction contractors.

Governor's Budget. The Governor's Budget proposes \$547,000 in General Fund and two positions for 1) overseeing field activities for emergency repairs and interim upgrades and 2) beginning the characterization, associated risk assessment, and options analysis necessary to remedy uncontrolled releases of hazardous waste from the BKK landfill facility.

Staff Recommendation. Staff recommends that the Subcommittee approve the budget proposal.

Action: Approved as budgeted

Vote: 3-0

2. Enforcement of Polluter Pays and Fiscal Integrity

Background. California's toxic site cleanup laws require that the Department of Toxic Substances Control (DTSC) recover its costs incurred for overseeing or implementing site cleanup activities. As of June 30, 2007, DTSC's accounts receivables aged 365 days or more totaled about \$50 million. This delinquent amount consists of 620 entities, some of which no longer exists or have merged with other companies which will require extensive research to determine ability to collect. If it is determined that the responsible party does not have adequate financial resources to pay part of all costs billed, documentation of this determination is needed to discharge such uncollectible accounts as required by the State Administrative Manual.

Governor's Budget. The Governor's Budget proposes \$104,000 from various funds and one limited-term position to collect on a backlog of outstanding accounts.

Staff Recommendation. Staff recommends that the Subcommittee approve the budget proposal.

Action: Approved as budgeted

Vote: 2-1 (Cogdill)

3. Implementation of AB 1109 – California Lighting Efficiency and Toxics Reduction Act

Background. Currently, there is no statewide program that addresses the hazardous substances content of general purpose lights sold in California. Light bulbs, especially fluorescent lights, contain persistent materials such as mercury that may be released to the environment upon disposal. Also, incandescent light bulbs may contain lead. The current recycling infrastructure has only two permitted light bulb recyclers in California.

AB 1109. AB 1109 (Huffman, 2007) prohibits the manufacture and sale in California of general purpose lighting products that contain a hazardous substance in excess of the amount allowed in the European Union and creates new information gathering and enforcement responsibilities for the Department of Toxic Substances Control (DTSC). AB 1109 enacts a "cradle to cradle" concept by restricting the manufacture and sale of lighting products and makes recommendations on methods for collecting and recycling end-of-life light bulbs.

Governor's Budget. The Governor's Budget proposes \$433,000 from the Hazardous Waste Control Account and three positions for implementing and enforcing the California Lighting Efficiency and Toxics Reduction Act.

Staff Recommendation. Staff recommends that the Subcommittee approve the budget proposal.

Action: Rejected budget proposal

Vote: 3-0

4. Revolving Loan Fund Trailer Bill

Need for the Account. The Department of Toxic Substance Control (DTSC) has been awarded \$3 million in federal funding for brownfield loans and grants over a five-year period. In order to comply with the federal grant cooperative agreement, an interest bearing account must be established for the deposit of grant advances and program income. The State Revolving Loan Fund (RLF) Grant Program funding revolves by using loan repayments, including interest, to provide new loans and grants. Furthermore, once the original award has been spent, additional federal funds can be requested.

Proposed Trailer Bill Language. The Governor has proposed to amend the Health and Safety Code to create the Revolving Loans Fund for Toxics' deposit of funds from the Federal Revolving Loan Fund (RLF). The Federal RLF Grant Program requires that all advances of grant money be deposited into an interest bearing account. The pending legislation creates a fund to receive Federal RLF deposits and operate the State RLF Grant Program.

Staff Recommendation. Staff recommends that the Subcommittee approve the trailer bill language.

Action: Approved the trailer bill

Vote: 3-0

5. CLEAN Loan Authority

Background. The CLEAN Loan Program provides low-interest loans to conduct environmental assessments of eligible urban properties, as well as loans for the cleanup and removal of hazardous materials where redevelopment is likely to have a beneficial impact on property values and quality of life. There are an estimated 100,000 brownfield sites in California.

Finance Letter. The Governor has submitted a finance letter for \$70,000 from the Cleanup Loans and Environmental Assistance Account to fund a contract for loan services, including

financial analysis and loan underwriting for the CLEAN program. The finance letter also includes \$30,000 for 2009-10 from the same account.

The contract for loan services is necessary in order for the Department of Toxic Substances Control (Toxics) to provide new loans. The CLEAN Loan Account (Account) currently has \$3.3 million available for new loans. The Account generates all of its funding through loan payments and interest earned.

Staff Recommendation. Staff recommends that the Subcommittee accept the finance letter.

Action: Approved as budgeted

Vote: 3-0

6. Calexico Office Move

Background. In 2005 the Department of Toxic Substances Control (DTSC) was designated as the Certified Unified Program Agency in Imperial County. The Calexico Office is currently housed in a building shared with the Employment Development Department (EDD). The EDD has notified DTSC that the space will not be available after November 1, 2008, when the office will be permanently closed. Prior to the closure date Toxics must secure new office space.

Finance Letter. The Governor has submitted a finance letter for \$338,000 from the State Certified Unified Program Account for moving and lease costs. The funds would be transferred from the Hazardous Waste Control Account.

Staff Recommendation. Staff recommends that the Subcommittee accept the finance letter.

Action: Approved as budgeted

Vote: 3-0

7. Stringfellow Pretreatment Plant

Background. The Stingfellow Hazardous Waste Site (Site) is a federal superfund near the community of Glen Avon in Riverside County. Until 1972, the Site received approximately 34 million gallons of highly acidic metal and organic waste, which has seeped into the groundwater. The Department of Toxic Substances Control (DTSC) is working to remediate the Site under the direction of the United States Environmental Protection Agency.

In 1992, a federal court deemed the State of California solely responsible for the Site. This was because the state selected the Site and issued all of the permits for operation. The state spends \$13 million on Site remediation annually, but there is no cost estimate for the total cost of cleanup.

Project. The proposed project is to construct a new pretreatment plant at the Site. This is because an underground plume of contaminated water is migrating from the Site and threatens to contaminate the groundwater basin. The proposed pretreatment plant would be used to pretreat groundwater before it is discharged into the industrial sewer, which is essential to meet effluent quality standards and land disposal restrictions. The current pretreatment plant was constructed in 1985 as an interim treatment facility, with an intended life of five years.

Governor's Budget. The Governor's Budget proposes \$3,235,000 in General Fund for the working drawings phase of the Stringfellow pretreatment plant.

Finance Letter. The Governor submitted a finance letter requesting reappropriation of the preliminary plans phase of the Stringfellow Pretreatment Plant project. The architectural and engineering contract has not yet been signed. The preliminary plans appropriation is \$1,063,000 General Fund.

Staff Recommendation. Staff recommends that the Subcommittee approve the finance letter and reject the budget proposal.

Action: Approved finance letter and rejected the budget proposal

Vote: 3-0

8. Model Plating Shop: Pollution Prevention

AB 721. AB 721 (Nunez, 2005) established the Metal Plating Loan Guarantee Program and the Model Shop Program in northern California to provide funds for metal plating facilities to purchase environmental control equipment to meet or exceed compliance standards, provide pollution prevention training and technical assistance to plating facilities statewide, and preserve the economic vitality of the industry in California. AB 721 required the Department of Toxic Substances Control (DTSC) to establish a Model Shop Program in northern California similar to the existing Model Shop Pilot Program in southern California.

Actions to Date. DTSC has developed information and promoted a voluntary program to industry and local government groups in northern California to attract participants to the loan program and build interest in the model shop program. To date, DTSC has:

- Conducted four pollution prevention audits and assisted plating shops to comply with regulations;
- Distributed information through the DTSC website to industry associations and local regulators; and
- Worked toward the DTSC source reduction and compliance improvement objectives for the metal plating industry.

Proposed Actions. With the funds requested here, DTSC would:

- Promote the loan program;

- Hold industry workshops in northern California;
- Develop summaries of pollution prevention implementation cases; and
- Develop and distribute industry specific information.

Governor's Budget. The Governor's Budget proposes \$117,000 (\$47,000 on-going from the Toxic Substances Control Account and \$70,000 one-time from Reimbursements) and one limited-term position to provide pollution prevention training and technical assistance to plating facilities as well as to provide funds for metal plating facilities to purchase environmental control equipment.

Staff Analysis. This program is already established and has guidelines for the loan program. The purpose of this new budget proposal is to assist the industry in taking greater advantage of the program. However, it is unclear how much additional compliance assistance and development of materials to explain the program to the industry would actually increase participation in the voluntary program.

Staff Recommendation. Staff recommends that the Subcommittee reject the budget proposal.

Action: Rejected budget proposal

Vote: 2-1 (Cogdill)

3980 Office of Environmental Health Hazard Assessment

1. Information Technology Branch Staffing

Background. The Information Technology Branch (ITB) supports 129 Office of Environmental Health Hazard Assessment (OEHHA) positions in Sacramento and Oakland. The ITB has four staff to procure, install, configure, secure, maintain and troubleshoot nine servers, laptops, desktops, printers, and copiers. The ITB staff also provides support for scientific staff to travel and telework, database development for tracking administrative products, and web development.

The ITB had a fifth employee, but that position was eliminated during the budget reductions of 2003-04. The need to create a new position comes from a CalEPA project to replace the existing network infrastructure with a more flexible one that will allow for consolidating and sharing resources and applications. OEHHA thinks the new network design will require a higher skill level for support.

Governor's Budget. The Governor's Budget proposes a redirection of \$116,000 for one position to provide information technology staffing at the Oakland office.

Staff Recommendation. Staff recommends that the Subcommittee approve the budget proposal.

Action: Approved as budgeted

Vote: 2-1 (Cogdill)

2. Development of Worker Protection Regulations

Background. Since the creation of the CalEPA in 1991, the Department of Pesticide Regulation (DPR) and the Office of Environmental Health Hazard Assessment (OEHHA) have statutorily been jointly responsible for the development of pesticide worker regulations. The intent of the statute is to ensure that all pesticide worker regulations are protective and reflect both a public health perspective and a compliance feasibility perspective.

In 2005, DPR was sued on the grounds that it failed to adequately consider and involve OEHHA in the development of methyl bromide field fumigation regulations. The court ruled that even though DPR and OEHHA worked together to develop the regulations, this work did not rise to the level of the “joint and mutual development” mandated by statute. In order to increase the working relationship with DPR, OEHHA is requesting an additional position.

New Position. OEHHA wants to hire an Associate Industrial Hygienist to augment the department’s ability to provide input to DPR in the development of pesticide regulations. This position would assist DPR in development of risk management directives, mitigation strategies, and in conducting consultations with workers and agricultural stakeholders. OEHHA has stated that an additional position would allow for an annual development of one or two pesticide worker protection regulations, including prioritizing needs, co-drafting regulatory text, and timely promulgation of the regulation.

Governor’s Budget. The Governor’s Budget proposes \$104,000 from the Department of Pesticide Regulation Fund for one permanent position to assist in the development of worker protection regulations relating to pesticides and worker safety.

Staff Recommendation. Staff recommends that the Subcommittee approve the budget proposal.

Action: Approved as budgeted

Vote: 2-1 (Cogdill)

3. Light Brown Apple Moth Eradication

Background. The proposed funding would allow the OEHHA to enter into an agreement with the California Department of Food and Agriculture (CDFA) to provide scientific guidance and support for the CDFA’s Light Brown Apple Moth eradication efforts. The request also proposes 3.0 positions on a three-year limited term basis to address the increased workload associated with OEHHA’s physician training, health information development, and data collection on aerial spraying and the use of pheromones in this pest management effort.

Finance Letter. The Governor has submitted a finance letter for \$625,000 in Reimbursement authority and three limited-term positions to work on Light Brown Apple Moth eradication efforts. The reimbursement will come from Department of Food and Agriculture federal funds.

Staff Recommendation. Staff recommends that the Subcommittee approve the finance letter.

Action: Approved as budgeted

Vote: 3-0

Discussion Items

0555 Secretary for Environmental Protection

1. Education and the Environment Initiative

Background. The Secretary for Environmental Protection and the California Integrated Waste Management Board are currently implementing the Education and the Environment Initiative (EEI) pursuant to Chapter 665, Statutes of 2003 (AB 1548) and Chapter 581, Statutes of 2005 (AB 1721). These statutes require the development of a unified education strategy to bring environmental education into California's primary and secondary schools.

Finance Letter. The Governor has submitted a finance letter that requests \$400,000 to provide additional expenditure authority for the Environmental Education Account (EEA). The funding is coming from settlement agreements and donations from individuals that are placed into the account.

The Governor's finance letter also includes budget bill language that would provide the Administration with the flexibility to increase the budgeted appropriation in this Item, upon appropriate notification to the Legislature, should revenue to the EEA exceed the budgeted level within the 2008-09 fiscal year.

Staff Recommendation. Staff recommends that the Subcommittee approve the funds in the finance letter but reject the budget bill language.

Action: Approved \$400,000 and rejected the budget bill language

Vote: 2-1 (Cogdill)

3900 Air Resources Board

1. Implementation of Air Quality Improvement Program and Enhanced Fleet Modernization Program

Background. AB 118 (Nunez, 2007) created three new programs to fund air quality improvement projects as well as develop and deploy technology and alternative and renewable fuels at the Air Resources Board (ARB). The programs are funded through increased fees on smog abatement, vehicle registration, and vessel registration fees. These new programs provide incentives for reducing emissions with viable technologies, and are intended to cover areas outside the Carl Moyer Program or the Goods Movement Program (Prop 1B funds). The new AB 118 programs address new source categories such as emerging hybrid engine technologies, evaporative emission controls, and lawn and garden equipment. The three new programs are:

Air Quality Improvement Program (AQIP): Provides grants to fund a wide range of equipment replacement. The ARB is supposed to develop and administer the AQIP in consultation with air districts. Funding for AQIP is approximately \$50 million annually through 2015. The specific projects eligible for grant funds are:

- On- and off- road equipment projects
- Projects to reduce off-road gasoline exhaust and evaporative emissions
- Research projects to determine the air quality impacts of alternative fuels
- Projects that augment the University of California agricultural experiment station and cooperative extension programs for research to increase sustainable biofuels production and improve the collection of biomass feedstock
- Incentives for consumers to replace lawn and garden equipment
- Incentives for medium- and heavy-duty vehicles and equipment mitigation including lower emission school bus programs; electric, hybrid, and plug-in hybrid on- and off-road medium and heavy-duty equipment; and regional air quality improvement and attainment programs implemented by the state or districts in the most impacted regions of the state
- Workforce training initiatives related to advanced energy technology designed to reduce air pollution
- Incentives to reduce emissions from high-emitting light-duty vehicles

Enhanced Fleet Modernization Program (EFMP): Allows for the voluntary retirement (scrapping) of high emitting passenger cars and light- to medium-duty trucks. The ARB is required to adopt guidelines for the program by July 1, 2009. The EFMP will begin by January 1, 2010 and will be administered by the Bureau of Automotive Repair. The funding for EFMP will be approximately \$30 million annually through 2015.

Alternative and Renewable Fuel and Vehicle Technology Program: Provides funding to develop and deploy technology and alternative fuel and renewable fuels in the marketplace. The ARB is required to adopt guidelines to ensure that the program complements existing air quality programs and fuels regulations, but the Energy Commission will administer the program. Funding for this program will be approximately \$120 million per year through 2015.

Governor's Budget. The Governor's Budget proposes \$1,740,000 from the Air Quality Improvement Fund for 8 permanent positions, 2 limited-term positions, and \$250,000 in contract funding to implement AB 118.

Staff Recommendation. Staff recommends that the Subcommittee hold this item open.

Action: Held open

2. Diesel Vehicles and Engines: Healthy Heart and Lung Act

Background. The Air Resources Board (ARB) commercial vehicle idling regulations are enforced across the state by ARB, local air districts, and other law enforcement officials. Tests on vehicles are performed by ARB inspection teams at border crossings, California Highway Patrol weigh stations, fleet facilities, and randomly selected roadside locations. The ARB issues about 1,000 citations per year for violations of excessive smoke, vehicle tampering, and excessive idling regulations. There are about 1,800 commercial vehicles currently in the state that have uncleared violations.

AB 233 (Jones, 2007) requires that:

- By January 1, 2009, and every three years thereafter, the Air Resources Board shall submit a plan to the Legislature addressing enforcement needs for on- and off-road diesel emission control regulations.
- The commercial vehicle idling provisions of state law are subject to a minimum civil penalty of three hundred dollars from the previous penalty of \$100.
- The Department of Motor Vehicles will refuse registration or renewal or transfer of registration for any diesel commercial vehicle if the owner or an operator of the motor vehicle at the time of the application has been cited for a violation of an air pollution regulation until the violation has been cleared.

Governor's Budget. The Governor's Budget proposes \$145,000 from the Motor Vehicle Account and one position to implement and support the requirements established under AB 233.

Staff Analysis. The Motor Vehicle Account has a structural deficit of over \$300 million, and it would not be prudent to add to that structural deficit by approving new positions.

Staff Recommendation. Staff recommends that the Subcommittee approve the budget proposal contingent upon the approval of the new license registration fee.

Action: Held open

3. Regulatory Implementation and Enforcement

Background. According to the American Lung Association's 2007 "State of the Air" report, over 90 percent of Californians live in regions with unhealthy air quality. According to the report, the greater Los Angeles region is ranked number one nationally for ozone and particulate air pollution. Exposure to unhealthy air contributes to thousands of premature deaths per year in California, as well as thousands of hospital admissions and hundreds of thousands of asthma episodes and lost days of work and school each year.

Proposal. This proposal requests 46 new positions to work on the following activities:

- Enforcement of the Heavy-Duty Diesel Vehicle Idling Emission Reduction Regulation, including commercial vehicle and school bus idling – 8 positions
- Implementation of the In-Use Off-Road Diesel Vehicles Regulation – 18 positions
- Enforcement of In-Use On-Road Diesel Fueled Heavy-Duty Drayage Trucks – 6 positions
- Enforcement of multiple Maritime Port and Rail Yard Regulations – 2 positions
- Implementation of New-Generation Light Duty Vehicle Testing Program, including light-duty diesel vehicles – 4 positions
- Implementation and enforcement of Formaldehyde in Composite Wood Products Regulation, including laboratory test method development – 8 positions
- Enforcement of Ozone Generating Air Cleaners Regulation, including field enforcement and laboratory certification – one position

Governor's Budget. The Governor's Budget proposes \$8,522,000 from the Motor Vehicle Account and 46 positions to implement and enforce the Air Resources Board's new and augmented regulatory programs.

Staff Analysis. The Motor Vehicle Account has a structural deficit of over \$300 million, and it would not be prudent to add to that structural deficit by approving new positions.

Staff Recommendation. Staff recommends that the Subcommittee approve 37 positions contingent upon the approval of the new license registration fee. The positions and contracts that would be rejected are the formaldehyde in composite wood products (8 PY) and the ozone generating air cleaners regulation (1 PY).

Action: Held open

4. Zero Emission Vehicle and Infrastructure Implementation Support Program

Background. The Air Resources Board's (ARB) mission is to help assure clean, healthful air for California's citizens through the reduction of air pollutants. Despite strong vehicle emission standards, many urban areas in California fail to meet state and federal health-based air quality standards.

The Zero Emission Vehicle (ZEV) regulation requires automakers to demonstrate and commercialize zero emission vehicles. The ZEV regulation allows automakers to comply with a portion of their obligation with ZEV through enabling technologies such as hybrid electric vehicles; plug-in hybrid electric vehicles; hydrogen internal combustion engine vehicles; and compressed natural gas vehicles.

The California Hydrogen Highway was formed by the Governor's Executive Order S-7-04 for an infrastructure network to support commercialization of zero emission hydrogen fuel cell vehicles. Automakers have targeted production of 2,500 fuel cell cars by 2011 in response to the ZEV regulation requirements; however, these vehicles have not yet been made commercially available.

Funds Returned. While ARB indicated it has an agreement with Pacific Gas and Electric (PG&E) to build and operate one public hydrogen fueling station in the Bay Area, PG&E has since publicly stated its intent not to proceed with construction of the station, citing a "more pressing need" to develop other alternative vehicle technologies.

Governor's Budget. The Governor's Budget proposes \$6 million from the Motor Vehicle Account for the Zero Emission Vehicle Program. Of this amount, \$1 million would be for incentives and co-funding opportunities for the purchase, lease, and demonstration of zero emission vehicles and certain advanced technology near zero emission vehicles. The other \$5 million would be for co-funding up to three hydrogen fueling stations.

LAO Recommendation. Despite over \$19 million in funding since 2005, the administration has little visible progress to show towards building the Hydrogen Highway described in the Governor's executive order. While the Executive Order envisions that, by 2010, every Californian will have access to hydrogen fuel through a network of fueling stations along California's major highways, to date, not a single hydrogen fueling station funded by the program is under construction or in operation.

According to ARB, it has expended \$6 million to fund part of the costs to modify or build 22 hydrogen-fueled vehicles, including buses, shuttle vans, cars, and trucks. However, ARB did not indicate which, if any, of those 22 vehicles currently are operating on California roadways versus how many are under construction or in the planning stages. Nor did ARB indicate the extent to which the availability of state funding was a necessary factor in the development of these vehicles.

The LAO concludes that ARB has sufficient resources to continue the hydrogen initiative in the budget year without additional funding because nearly one-half the funds appropriated during the three-year history of the program—\$9.4 million—currently remains available for new projects. Also, ARB indicates that it intends to use all but \$600,000 of the \$9.4 million as matching funds for the construction of publicly accessible hydrogen fueling stations. The LAO therefore recommends that the Legislature deny this budget request.

Staff Analysis. The administration has borrowed funds from the Motor Vehicle Account to fund AB 32 activities. Those loans should be repaid as quickly as possible. Also, the Legislature passed AB 118 (Nunez, 2007) that provides funds for activities such as the hydrogen highway.

Staff Recommendation. Staff recommends that the Subcommittee reject the budget proposal. Staff further recommends that the Subcommittee revert the \$9.4 million in unexpended Motor Vehicle Account funds and direct those funds to pay back a portion of the loan taken from the MVA to finance AB 32 activities in 2007-08.

Action: Held open

5. Budget Balancing Reduction

Governor's Budget Balancing Reduction. The Governor proposes a reduction of \$243,000 General Fund to the Air Resources Board's budget. The decrease would come from contract funds.

Staff Recommendation. Staff recommends that the Subcommittee reduce the Air Resources Board's budget by \$1.8 million General Fund. This would allow the ARB to retain the positions funded with General Fund but would eliminate the contract funds.

Action: Held open

3910 California Integrated Waste Management Board

Background. The California Integrated Waste Management Board (CIWMB), in conjunction with local agencies, is responsible for promoting waste management practices aimed at reducing the amount of waste that is disposed in landfills. The CIWMB administers various programs that promote waste reduction and recycling, with particular programs for waste tire and used oil recycling. The board also regulates landfills through a permitting, inspection, and enforcement program that is mainly carried out by local enforcement agencies that are certified by the board. In addition, CIWMB oversees the cleanup of abandoned solid waste sites.

Governor's Budget. The Governor's Budget proposes \$209 million to support CIWMB in the budget year. This is an approximately 14.4 percent decrease over the level of support in the current year. The board does not receive General Fund support.

Summary of Expenditures				
<i>(dollars in thousands)</i>	2008-09	2009-10	\$ Change	% Change
Type of Expenditure				
Waste Reduction and Management	\$ 247,599	\$ 213,072	-\$34,527	-13.9
Administration	9,909	9,909	0	0.0
<i>less distributed administration</i>	-9,909	-9,909	0	0.0
<i>loan repayments</i>	-3,157	-3,857	-700	22.2
Total	\$ 244,442	\$ 209,215	-\$35,227	-14.4
Funding Source				
General Fund	\$ -	\$ -	\$ -	0.0
Special Funds	243,797	207,203	-36,594	-15.0
Bond Funds	-	-	0	0.0
<i>Budget Act Total</i>	<i>243,797</i>	<i>207,203</i>	<i>-36,594</i>	<i>-15.0</i>
Federal Trust Fund	-	200	200	100.0
Special Deposit Fund	307	307	-	0.0
Reimbursements	338	1,505	1,167	345.3
Total	\$ 244,442	\$ 209,215	-\$35,227	-14.4

1. Covered Electronic Waste Recycling Payments

Background. The California Integrated Waste Management Board (CIWMB) makes payments to electronic waste recyclers from the Electronic Waste Recycling and Recovery Account (EWRRA). Currently, the level of payments being made to certified electronic waste recyclers from this account is exceeding the revenue generated by the covered electronic waste recycling fee. At the current rate of payments, the EWRRA fund balance will be exhausted by August 1, 2008.

The CIWMB has the authority to adjust the fee for revenue purposes, and can adjust the payments made to recyclers based on the average net costs. If the CIWMB chooses to increase the fee, per statute, the fee increase will not go into effect until January 1, 2009.

Finance Letter. The Governor submitted a finance letter for budget bill language allowing a loan from other special funds to the Electronic Waste Recycling and Recovery Account to cover the fund shortfall. The loans must be repaid by June 30, 2010. The proposed language is:

Notwithstanding any other provision of law, upon approval and order of the Director of Finance, the California Integrated Waste Management Board may borrow sufficient funds from special funds that otherwise provide support for other programs for the boards for cash flow purposes for this account. Any such loans are to be repaid by June 30, 2010, with interest at the rate earned by the Pooled Money Investment Account.

Staff Recommendation. Staff recommends that the Subcommittee approve the following budget bill language:

Notwithstanding any other provision of law, upon approval and order of the Director of Finance, and not sooner than 30 days after notification in writing to the Chairperson of the Joint Legislative Budget Committee, the California Integrated Waste Management Board may borrow sufficient funds from special funds that otherwise provide support for other programs for the boards for cash flow purposes for this account. Any such loans are to be repaid by June 30, 2010, with interest at the rate earned by the Pooled Money Investment Account.

Action: Approved staff recommended budget bill language with amendment. Subchair modified the budget bill language to specify that the Joint Legislative Budget Committee approve the transfer.

Vote: 2-1 (Cogdill)

2. Education and the Environment Initiative – Phase Five

Background. SB 926 (Torlakson, 2001) created the Office of Education and the Environment within the California Integrated Waste Management Board (CIWMB). AB 1548 (Pavley, 2003) directed the development of the Education and the Environment Initiative (EEI) model

curriculum, to obtain approval of the EEI model curriculum from the State Board of Education, and to make the EEI model curriculum available to California's K-12 public schools.

The Office of Education and the Environment is required to comment on any regulatory or enforcement actions taken by CalEPA, Resources Agency boards, departments, or offices that require the development of or encourage the promotion of environmental education for elementary and secondary school pupils. The Office of Education and Environment must also ensure materials produced and distributed in public schools are aligned to the Education Principles and Concepts, and coordinate with all state agencies to develop and distribute environmental education materials.

The *2005-06 Budget Act* provided CIWMB \$7 million and 5.5 permanent positions for the EEI program.

Governor's Budget. The Governor's Budget proposes \$1,167,000 from reimbursements paid by the Department of Conservation for one new staff position and consultant contracts.

Staff Recommendation. Staff recommends that the Subcommittee hold this item open.

Action: Held open

3930 Department of Pesticide Regulation

1. Unclaimed Gas Tax

Background. A tax of \$0.18 per gallon is collected on all sales of gasoline, including gasoline that is used off-highway by farmers and gasoline used by small horticultural equipment operators. The payers are eligible to receive a credit for these taxes, but each year there is unclaimed gas tax that is left in the Motor Vehicle Fuel Account. The Department of Transportation transfers these unclaimed gas tax funds to the Department of Food and Agriculture, which uses them for a number of agricultural programs, including pesticide use enforcement.

Unclaimed gas tax funds have historically been allocated for pesticide use enforcement activities, however, statutory provisions allocating these funds did not exist. AB 1713 (Committee on Agriculture, 2007) revised the distribution of the unclaimed gas tax to statutorily appropriate \$9 million to the California Department of Food and Agriculture, which is to be disbursed to the County Agricultural Commissioners (CAC) for pesticide enforcement activities. AB 1713 also requires CACs to meet specified reimbursement criteria in order to be eligible to receive these funds and places new disbursement requirements on the Department of Pesticide Regulation (DPR).

New DPR Tasks. Under AB 1713, DPR assumes responsibility for administrative oversight of the unclaimed tax funds and how they are allocated for pesticide enforcement activities.

Governor's Budget. The Governor's Budget proposes \$48,000 from the Pesticide Regulation Fund for 0.5 positions to provide state oversight and support in administering unclaimed gas tax reimbursement to the county agricultural commissioners as specified in AB 1713.

Staff Recommendation. Staff recommends that the Subcommittee hold this item open.

Action: Held open

2. Implementation of Volatile Organic Compounds Regulations Trailer Bill

Background. Current law requires those who sell pesticides that have been registered with the Department of Pesticide Control to pay a mill fee of 7.6 mills per dollar of sales for all applicable pesticide sales. The mill fee is distributed to counties as reimbursement for costs incurred in the administration and enforcement of pesticide regulations.

Proposed Trailer Bill Language. The proposed trailer bill language would take 0.5 mill per dollar of sales for all pesticide sales for use in this state and provide it to counties in air quality nonattainment areas to assist those counties in the administration and enforcement of restrictions on the use of field fumigants.

Staff Recommendation. Staff recommends that the Subcommittee hold this item open.

Action: Approved trailer bill language

Vote: 2-1 (Cogdill)

3940 State Water Resources Control Board

1. Enhanced Implementation of the CIWQS

Background. The California Integrated Water Quality System (CIWQS) is used to track and automate core regulatory business processes for the State and the Regional Water Quality Control Boards. CIWQS is intended to make accurate, complete, and up-to-date regulatory, water quality and water use information available to all in a flexible and easy-to-use electronic format. CIWQS is composed of program modules and was built to be expanded to meet the information needs of the Water Boards.

In 2005-06 the State Water Board staff, the regulated community, and the public began using CIWQS to submit data and track the status of core regulatory programs. However, many users complained that the system did not meet expectations. The Water Boards conducted an external expert review of the entire CIWQS. The expert panel found that governance, communication, outreach, and training for CIWQS could all be improved.

Governor's Budget. The Governor's Budget proposes two positions and \$129,000 in contract funds from the Waste Discharge Permit Fund to develop a timely data entry process, eliminate data entry backlog, develop performance measures, enhance communications, and provide outreach for CIWQS.

LAO Recommendation. The LAO reviewed the Board's IT systems for their *Analysis of the 2007-08 Budget Bill* and cited various deficiencies including a lack of strategic plan, circumvention of legislative oversight, and data entry backlogs which resulted in misleading information to the public on permitting and enforcement. In recent months, incorrect or incomplete data continues to be reported to the public using CIWQS. This is particularly the case with respect to enforcement data. Not only does this cause confusion as to the Board's progress in meeting its water quality goals, but the lack of reliable enforcement data (including the status of corrective actions made in response to an enforcement action) also frustrates both the Board's enforcement efforts and the efforts of the regulated community to comply with enforcement actions taken against them.

Additionally, the LAO finds that the Board has not yet reported on its actual progress in addressing its efforts to correct erroneous historical data and reduce the data entry backlog to its

federal funding partners (specifically US EPA, Region IX). This, among other reasons, led the US EPA to deny further federal grant resources in support of CIWQS-related tasks, including in future budget years. Therefore, the budget reflects no federal funding for the program.

The LAO recommends the following budget bill language:

No funds appropriated in this item or any other items appropriating funds to the State Water Resources Control Board can be used for new information technology modules related to the California Integrated Water Quality System (CIWQS) no sooner than 30 days after the board has submitted its updated Agency Information Management Strategy and the report required by the Supplemental Report of the 2007 Budget Act to the Joint Legislative Budget Committee, or such lesser time as the chair may determine.

Staff Recommendation. Staff recommends that the Subcommittee approve the budget proposal without budget bill language.

Action: Approved as budgeted

Vote: 2-1 (Cogdill)

2. Proposition 84 Local Assistance Resources

Proposed Projects. The funding would be used for the following program areas:

Agricultural Water Quality Grant Program – Grants to public agencies or nonprofit organizations for the purposes of improving agricultural water quality through demonstration projects, research, construction of agricultural drainage improvements, and for projects to reduce pollutants in agricultural drainage water through reuse, integrated management, or treatment.

Urban Stormwater Grant Program – Grants to local public agencies for projects designed to implement stormwater runoff pollution reduction and prevention programs, including diversion of dry weather flows to publicly owned treatment works for treatment, acquisition, and development of constructed wetlands.

Clean Beaches Grant Program – Matching grants for protecting beaches and coastal waters from pollution and toxic contamination pursuant to the Clean Beaches Program. Also, Proposition 84 authorizes not less than \$18 million for the Santa Monica Bay Restoration Commission as part of the Clean Beaches Program.

Areas of Special Biological Significance – Grants to local public agencies to assist with their efforts to comply with the discharge prohibition into Areas of Special Biological Significance (ASBS). There are 34 ASBS sites on the California coast. These grants would go toward projects limiting debris-carrying water runoff on the sites.

Governor's Budget. The Governor's Budget proposes \$100,500,000 in Proposition 84 bond funds and five-year expenditure authority for the following programs:

- Agricultural Water Quality Grant Program – \$7,725,000
- Urban Stormwater Grant Program – \$44 million
- Clean Beaches Grant Program – \$14 million
- Areas of Special Biological Significance – \$19,890,000
- Santa Monica Bay Restoration Commission – \$14,870,000

Staff Recommendation. Staff recommends that the Subcommittee approve \$56.5 million but reject the \$44 million for the Urban Stormwater Grant Program. The Urban Stormwater Grant funds will be handled through a policy bill.

Action: Approved \$56.5 million but rejected the \$44 million for the Urban Stormwater Grant Program.

Vote: 2-1 (Cogdill)

3. AB 258 – Plastic Discharges

Background. AB 258 (Krekorian, 2007) requires the State Water Resources Control Board (SWRCB) and the Regional Water Boards, by January 1, 2009, to implement a program for the control of discharges of preproduction thermoplastic resin pellets from point and nonpoint sources. These plastic pellets are distributed throughout California at as many as 2,700 manufacturing, handling, or transportation facilities. Currently, only one-third of the 2,700 facilities are subject to the National Pollutant Discharge Elimination System (NPDES) General Industrial Stormwater Permit (General Permit).

New Actions. The SWRCB intends to increase the enrollment of the plastic pellet manufacturing, handling, or transportation facilities already subject to the General Permit through a comprehensive inspection and enforcement program. The General Permit will also be revised to include Best Management Practices. For those facilities that currently do not have a General Permit, SWRCB will inspect a cross-section of the various plastic pellet facilities in order to understand which facilities are discharging plastic pellets and should be permitted. This effort will also provide technical information to the SWRCB to determine the appropriate regulatory methods to address the discharges from point and nonpoint sources.

Governor’s Budget. The Governor’s Budget proposes \$1,036,000 from the Waste Discharge Permit Fund and 8.5 positions for development of a program to control the discharge of preproduction thermoplastic resin pellets, also known as “nurdles.”

Staff Analysis. The full committee, throughout its deliberations, has directed the subcommittees to carefully examine new program funding, irrespective of the funding source, and only move forward on matters that minimally are needed for critical health and safety purposes.

Staff Recommendation. Staff recommends that the Subcommittee reject the budget proposal.

Action: Approved as budgeted

Vote: 2-1 (Cogdill)

4. Effectiveness of Municipal Stormwater Programs

Background. Current law requires the State Water Resources Control Board (SWRCB) to develop guidelines for assessing the effectiveness of municipal stormwater programs that are being implemented pursuant to the requirements contained in the National Pollutant Discharge Elimination System (NPDES) permits. Statute was enacted in response to concerns that compliance with permit requirements were not adequately inspected and that it was not known if the programs being implemented are effective in achieving improved water quality.

Contract Funds Requested. The proposal includes \$500,000 in consultant contracts. The contract consultants would be hired to develop the required guidelines.

Governor's Budget. The Governor's Budget proposes \$590,000 from the Waste Discharge Permit Fund and one position for the development and implementation of guidelines for assessing the effectiveness of municipal stormwater programs.

Staff Analysis. The evaluation of the effectiveness of municipal stormwater programs should not become an on-going program. The evaluation can positively inform policy and the funding of future projects, and thus will be useful to the state over the long term. However, the actual evaluation itself should not last more than two years.

Staff Recommendation. Staff recommends that the Subcommittee approve the budget proposal as two year limited-term funding.

Action: Approved as two-year funding

Vote: 2-1 (Cogdill)

5. Regional Board Line Items

Background. Currently, the nine Regional Water Quality Control Boards' budgets are presented as one line item in the budget. This allows the State Board to move funds between the various Regional Boards as need arises, but does not provide transparency for the Legislature as to how much money each Regional Board is receiving.

Staff Recommendation. Staff recommends that the Subcommittee request that each Regional Water Board be provided its own line item in the budget for transparency. Fund could still be moved between the Boards with a 30-day notification letter to the Joint Legislative Budget Committee.

Action: Held open

6. San Diego Bay Toxic Sediment Clean-up

Background. In 1996, the National Oceanic and Atmospheric Administration identified San Diego Bay as the second most toxic bay in the nation. A few years earlier, in 1991, the San Diego Regional Water Quality Control Board (San Diego Board) requested an initial sediment study of the San Diego Bay. However, it took until 2005 for the San Diego Board to issue a tentative Clean-up and Abatement Order (Order No. R9-2005-0126) for contaminated marine sediment in San Diego Bay.

After the tentative Cleanup and Abatement Order (CAO) was issued, it was determined that the administrative record for the proceeding should be made available electronically, in indexed and searchable format, to facilitate location of documents within the record and meaningful participation in the proceeding for both the tentatively named responsible parties and other interested parties, including non-governmental environmental organizations. The electronic record was finally completed and released to the parties and the public on April 4, 2008. Upon release of the record, the previous order of proceedings provided a 257 day process of discovery, comments, submission of evidence, briefs, hearings before the Regional Board and deliberation and adoption of a final order.

Staff Recommendation. Staff recommends that the Subcommittee adopt the following supplemental report language:

On or before January 30, 2009 the State Water Resources Control Board shall submit a report to the Joint Legislative Budget Committee on the work of the San Diego Regional Water Quality Board on San Diego Bay cleanup. The report shall include information on the resources the San Diego Regional Water Quality Board is dedicating to the project; the estimated total cost and scope of the project; and a progress report for the project.

Action: Approved the staff proposed supplemental report language

Vote: 3-0

7. Agricultural Water Runoff Supplemental Report Language

Background. Agricultural nonpoint source (NPS) pollution is the leading source of water quality impacts on surveyed rivers and lakes, the second largest source of impairments to wetlands, and a major contributor to contamination of surveyed estuaries and ground water. Agricultural activities that cause NPS pollution include poorly located or managed animal feeding operations; overgrazing; plowing too often or at the wrong time; and improper, excessive, or poorly timed application of pesticides, irrigation water, and fertilizer. Pollutants that result from farming and ranching include sediment, nutrients, pathogens, pesticides, metals, and salts.

Impacts from agricultural activities on surface water and ground water can be minimized by using management practices that are adapted to local conditions. The State Water Resources Control Board is currently researching how to best adapt such management practices for California.

Staff Recommendation. Staff recommends that the Subcommittee adopt the following supplemental report language:

On or before January 30, 2009, the State Water Resources Control Board shall submit a report to the Joint Legislative Budget Committee and to the relevant policy committees that details: 1) the precise actions the SWRCB would have to undertake to obtain a 30 percent reduction to agricultural pollution runoff into the Sacramento-San Joaquin Delta and its tributary watersheds by 2012; 2) the estimated costs of those actions; and 3) which of those actions can be completed administratively and which would require legislation to implement.

Action: Held open

8. Water Quality Management Fee – LAO Recommendation

The LAO Recommends Support for Core Regulatory Programs Be Shifted to Regulatory Fees. The LAO has previously recommended that fees fully support regulatory programs at the water boards, based on the application of the polluter pays principle. This funding principle provides that private individuals or businesses that use or degrade a public resource (such as water) should pay for the social costs imposed by their use of the resource. Although significant progress has been made in recent years to shift the board's regulatory program funding to fees, the LAO's review finds that the proposed budget includes about \$11 million of General Fund for regulatory activities that are more appropriately funded from fees.

Boards Not Keeping Up With Workload. The LAO has concluded in several prior *Analyses* that the state and regional boards' inability to keep up with their workload in their core programs has resulted in backlogs in the Total Maximum Daily Loads (TMDL) program and in water quality and water rights permitting and enforcement. To avoid further exacerbating backlogs within these programs, the LAO recommends that the Governor's proposed budget-balancing reductions in regulatory programs (totaling \$1.2 million) be offset fully by fee revenues of a like amount (\$400,000 in the Waste Discharge Permit Fund, \$400,000 in the Water Rights Fund, and \$400,000 of new THP fee revenues) so that program reductions will not have to be made to create the General Fund savings.

The LAO Recommends New Broad-Based Fee to Replace General Fund Support for Water Quality Management. The bulk of the board's General Fund supported programs—\$19.6 million—relate to the assessment of the state's water quality, and the related development of water quality standards and plans which ultimately form the basis of the board's permitting and enforcement actions.

Although not strictly regulatory program activities, the LAO finds that the board's water quality management activities are appropriately funded by a broad-based fee on water users statewide

who, as users, impact water quality. This is a somewhat broader application of the polluter pays principle applied currently to regulatory programs. As an example of a potential fee structure, a fee of less than \$10 per year, per individual water utility hookup, to include residential, commercial, and agricultural users would provide funding at the level of current General Fund support for these activities (\$19.6 million). The LAO thinks that shifting funding for the board's core water quality management activities to fees would provide greater funding stability to these activities that are the foundation of much of the board's work.

The LAO therefore recommends the enactment of legislation to establish the new broad-based fee at a level that will replace the General Fund support budgeted for water quality management (\$19.6 million) and offset the Governor's proposed General Fund budget-balancing reduction of \$2.4 million for these activities. The LAO recommends that the legislation create a new special fund for the deposit of these new revenues. In order to create full-year General Fund savings from the LAO recommendation in the budget year, it would be necessary to enact urgency legislation to create the new broad-based fee.

Staff Recommendation. Staff recommends that the Subcommittee hold open this item.

Action: Held open

9. Water Supply Reliability and Stream Flow Protection

Background. The State Water Board is the only administrative agency in California with authority over water rights. The administrative water rights program was first enacted in 1914, and the scope of the program remained relatively unchanged for the next 50 years. Since 1965, the water rights program has been directed by the Legislature to focus on water use efficiency.

The State Water Board's handling of water rights applications is decreasing. During the fiscal years 2003-04 and 2004-05, only 61 applications were filed with the Board as opposed to the 832 applications filed during fiscal years 1963-64 and 1964-65. Despite the decreased number of applications, a 2006 audit by the Bureau of State Audits found that the processing time for those permits was 3.3 years, an increase of 35 percent over the average processing time in the 1960s.

Proposal. The department states that the additional requested funds would allow them to collaborate with other state and federal agencies in the department's efforts to protect Bay-Delta beneficial water uses; reduce illegal water diversions; improve compliance with existing water right permits; improve processing time for water right applications, petitions, and other submittals; reduce existing permitting, petition, and licensing backlogs; improve program oversight, and improve stakeholder outreach and education.

Governor's Budget. The Governor's Budget proposes \$316,000 from the Water Rights Fund and 6.5 positions to increase the service level of the Water Rights Program.

Staff Analysis. The department has informed staff that the approval of new funding from the Water Rights Fund without corresponding fee increases would create a structural deficit in the

fund. In addition, the water rights fee is currently in litigation and the program's future funding is uncertain. If the courts find the water rights fee inappropriate, the State would have to pay back the expended funds with General Fund.

Staff Recommendation. Staff recommends that the Subcommittee hold this item open.

Action: Held open

10. Clean Up and Abatement Account Trailer Bill

Background. Existing statute levies administrative fines on waste dischargers for failure to file required discharge monitoring reports. These funds are directed to the Waste Discharge Permit Fund (WDPF) and are statutorily designated to be used for waste clean-up or to abate the effects of water pollution. However, because statute also requires that these funds be separately accounted for, a new subaccount in the WDPF would be necessary in order to expend these fines for the purpose of clean-up and abatement activities. This subaccount would duplicate the purpose of the existing State Water Pollution Cleanup and Abatement Account (CAA). The requested funds transfer will allow the Water Board to use all available funding to administer the CAA and protect water quality.

The CAA is funded by fines and penalties on waste discharge violators and is continuously appropriated. The account provides funds for water quality improvement projects undertaken by the State Water Resources Control Board (Water Board) when there are no responsible parties available to be used for the purpose of cleaning up waste or abating its effects on the water of the state.

Finance Letter. The Governor has submitted a finance letter to transfer \$3.2 million from the Waste Discharge Permit Fund (WDPF) to the State Water Pollution Cleanup and Abatement Account (CAA), a subaccount of the State Water Quality Control Fund. The finance letter includes budget bill language and trailer bill language.

Proposed Trailer Bill Language. The proposed trailer bill language establishes a new subaccount in the Waste Discharge Permit Fund in order to expend fines on dischargers for the purpose of clean-up and abatement activities.

Staff Recommendation. Staff recommends that the Subcommittee hold this item open.

Action: Held open

11. Investigations, Enforcement, and Fraud

Background. The State Water Resources Control Board (SWRCB) relies on the dischargers and diverters to comply with an honor-system of self-monitoring and reporting to the Water Board on their compliance with permit and other monitoring and reporting mandates. Dischargers and diverters collect and analyze their own samples, take their own measurements, and submit

results. Except for water right inspections and limited sampling during water quality inspections, compliance determinations rely on each discharger's or diverter's self-monitoring and reporting of results.

In 2000, the SWRCB began using a database to capture information about violations and enforcement actions. During 2000, the number of water quality violations was 23,652. Since then, the number of violations has steadily decreased to 16,064 in 2004. Also, a recent review of facility self-monitoring data by a contractor for the USEPA found that more than 50 percent of the 300 California facilities reviewed had misreported data about their waste discharges.

Unauthorized water diversions have adverse affects on those who are legally diverting as well as on fisheries. The SWRCB has the authority to enforce against illegal diversions of water, but normally lacks the self-reporting to justify an investigation.

Governor's Budget. The Governor's Budget proposes \$1.3 million and 8.5 positions. The proposal is divided as follows:

- Water Quality: 5.2 positions and \$790,000 from the Waste Discharge Permit Fund for enforcement of water quality violations.
- Water Rights: 3.3 positions and \$524,000 from the Water Rights Fund to perform inspections of water diversions and enforcement of water right violations.

Staff Analysis. The department has informed staff that the approval of new funding from the Water Rights Fund without corresponding fee increases would create a structural deficit in the fund. In addition, the water rights fee is currently in litigation and the program's future funding is uncertain. If the courts find the water rights fee inappropriate, the State would have to pay back the expended funds with General Fund.

Staff Recommendation. Staff recommends that the Subcommittee hold this item open.

Action: Held open

12. Supplemental Environmental Projects

LAO Recommendation. Under current law, the regional boards may administratively issue civil liability penalties against companies, cities, and individual waste dischargers that violate water quality laws or permit conditions, or do not comply with enforcement and penalty orders of the boards. Monetary penalties collected through these enforcement actions are paid to the state board and deposited in the Cleanup and Abatement Account (CAA), an account within the State Water Quality Control Fund. These funds are used to address priority water quality cleanup and abatement activities throughout the state. The budget projects revenues of about \$5.2 million in the budget year to CAA. This amount fluctuates depending on the size and number of individual penalties assessed in any given year.

SEPs. As an alternative to paying penalties that are deposited into the CAA, current law allows dischargers to pay a portion of their penalty assessment by providing funding for water quality improvements within the region in which the enforcement action was taken. These are known as

SEPs. The SEPs are projects, generally proposed and implemented by nonprofits, local governments, or collaborative efforts, that enhance the beneficial uses of the waters of the state, provide a benefit to the public at large, and are not otherwise required by board directives. Examples of SEPs include pollution prevention projects, environmental restoration programs, water education activities, and watershed assessments.

The SEP Process. Most regional boards choose to use SEPs as an alternative to full monetary penalties, as current law allows. Generally, this means that in negotiations with the board, the discharger and board come to an agreement on how much will be paid in monetary penalties, and how much will be paid to support a SEP. Some boards have a formal list of potential SEPs available to assist this negotiation process, while others have no criteria or formal list available to the public during this phase of the penalty negotiations. Once a project is agreed upon, the discharger then pays both the monetary penalty (deposited in the CAA for statewide purposes) as well as the SEP amount provided for in the penalty agreement. Regional boards are then required to track these projects.

State Board Has Role in SEP Oversight. The LAO's review finds that the state and regional boards both have statutory responsibility for tracking and reporting enforcement activity. The LAO also finds that a regional board may include in any penalty the projected administrative costs associated with the implementation of a SEP. While the majority of day-to-day oversight of a SEP project is conducted by the regional board, the LAO finds that the state board has a role in providing oversight of the SEP process, and is ultimately responsible for reporting on enforcement activity and outcomes statewide. These state board costs are eligible for funding within the administrative component of a SEP.

Recommend Measures to Increase Oversight of Regional Board Enforcement. The LAO finds that SEPs serve a useful purpose by allowing regional boards to reduce the amount of time spent on negotiating penalties, and providing for beneficial water quality improvements. However, the LAO recommends several measures to increase state board and legislative oversight of regional board enforcement activity, including the use of SEPs.

Enforcement Data Must Be Updated and Clear. First, the LAO thinks regional boards should update their enforcement-related data entries to include all penalties and SEPs issued, and this information should be available on the state board's public and internal websites. This would allow the state board to oversee enforcement actions at the regional board level and to better compare regional board use of SEPs. The LAO also thinks providing the public, including the discharger community, access to all SEP information in a clear, usable format provides another means to hold the regional boards accountable for their use of SEPs and allows potential SEP project proponents to be informed of the type and quality of SEPs authorized by the board.

Trust Fund Use Raises Issues. Second, the LAO thinks it important to establish controls for the current regional board practice of setting up trust funds as holding funds for SEPs. For example, what happens to these funds should a SEP project not come to fruition? The LAO thinks the state board, in its next update of its statewide enforcement policy, should set clear guidelines for such trust funds, including clear and reasonable time limits for the trust fund, with requirements that SEP projects commence by a date certain of the SEP funding being established.

Legislation Should Restrict SEP Assessment, Unless Otherwise Indicated by Law. Third, the LAO finds the current practice of issuing SEPs for over 50 percent of the total monetary value of the penalty has the effect of reducing funding available at the state board for statewide enforcement purposes, including oversight of regional board enforcement. The LAO recommends the regional boards be required to annually report to the state board on all SEPs issued, and the amount of monetary penalty these SEPs offset, in order to assure regional board compliance with current statutory requirements governing the use of SEPs. The LAO thinks that this recommendation should increase the availability of funds in the CAA by up to \$500,000 in the budget year, based on a review of historical enforcement penalty collection. The LAO therefore recommends that the expenditure authority from the State Water Quality Control Fund be increased by a like amount, allowing the state board to increase its oversight of regional board enforcement activity.

Staff Recommendation. Hold open.

Action: Held open

3960 Department of Toxic Substances Control

1. Green Chemistry and Pollution Prevention

Background. Green chemistry is the process of reducing or eliminating the use of hazardous materials altogether. The Green Chemistry Initiative is a collaborative approach for identifying options to significantly reduce the impacts of toxic chemicals on public health and the environment. The Green Chemistry Initiative strives to provide recommendations for: developing a consistent means for evaluating risk; reducing exposure; encouraging less-toxic industrial processes; and identifying safer, non-chemical alternatives. Green chemistry is a fundamentally new approach to environmental protection, transitioning away from managing toxic chemicals at the end of the lifecycle to reducing or eliminating their use altogether.

Proposal. The positions requested in this proposal would:

- Continue outreach and education of projects completed;
- Develop at least four additional pilot projects every two years (for six total);
- Expand technical assistance, outreach, and education using materials developed during pilot projects to small business assistance programs, industry associations, and local implementing agencies; and
- Measure the effectiveness of implementing pollution prevention technologies to evaluate whether future programs to provide funding are feasible.

Governor's Budget. The Governor's Budget proposes \$772,000 from the Toxic Substances Control Account and 6 positions for focusing on product design and industrial innovation that reduces the use of harmful chemicals in products.

Staff Analysis. The Green Chemistry program began by working with manufacturers at the factory level to examine how to keep toxic materials out of the product line. However, the conceptual direction of the Green Chemistry program is best served when the toxicity of the product materials is considered at the design phase. Without knowledge as to which chemicals pose the greatest risk, and what is the toxicity level of various chemicals, the department cannot recommend alternatives to the product designers. Thus the Department of Toxic Substances Control (DTSC) should create a matrix to identify the hazard traits posed by chemicals generally in order to avoid threats of potential substitute or alternative ingredients.

Staff Proposed Trailer Bill Language. Staff recommends that the Subcommittee adopt the following trailer bill language:

Section 1. The department shall coordinate agency authority to enforce statutes and regulations associated with regulated substances in consumer products; and, prioritize the source reduction of hazardous wastes through actions directed at consumer products, including product reformulation, input changes, production process changes and related source reduction measures established pursuant to the Hazardous Waste Source Reduction and Management Review Act of 1989 (Section 25244.15 (b) of the Health and Safety Code).

Section 2. The department shall contract for the development of a data matrix to identify the hazard traits posed by chemicals in commerce and thereby provide assistance to businesses with a scientific basis for making source reduction decisions, including an assessment of the magnitude and number of hazards present in current practices as well as those hazards posed by potential substitute chemicals in source reduction activities, pursuant to Section 25244.17 of the Health and Safety Code.

Staff Recommendation. Staff recommends that the Subcommittee approve the staff proposed trailer bill language and approve \$772,000 from the Toxic Substances Control Account for the following actions:

1. Provide \$400,000 for the creation of the chemicals matrix.
2. Approve one position to oversee the development of the chemicals matrix.
3. Approve two positions to work on pollution prevention.

Action: Held open

2. Fiduciary Responsibility: Appropriate Litigation Support for DTSC

Background. Historically, the Department of Justice (DOJ) has provided litigation support to the Department of Toxic Substances Control (DTSC) through a direct appropriation to DOJ. As

part of the 2007-08 *Budget Act*, the Governor vetoed half of the toxic litigation support funding with a statement that DTSC and local governments were completing much of the work themselves. This request is for an appropriation to DTSC with an interagency agreement with DOJ for the litigation services. DTSC believed that it will be able to better manage the cases that are most important to it if DTSC approves all expenditures.

Governor's Budget. The Governor's Budget proposes \$2,168,000 (\$1,181,000 from the Toxic Substances Control Account and \$987,000 from the Hazardous Waste Control Account) for an interagency agreement with the Department of Justice to provide litigation support for DTSC cost recovery and enforcement activities.

Proposed Trailer Bill Language. The proposed trailer bill changes Health and Safety Code Sections 25173.6 and 25174 to allow DTSC to enter into an interagency agreement with DOJ rather than the funds for toxics litigation being directly appropriated to DOJ.

Staff Recommendation. Staff recommends that the Subcommittee hold this item open.

Action: Held open

3980 Office of Environmental Health Hazard Assessment

1. Alternative Funding Sources

Background. Most of Office of Environmental Health Hazard Assessment's (OEHHA) activities are required by statute and are supported largely by the General Fund. Using General Fund money, OEHHA identifies cancer-causing chemicals for annual updates of the state list of chemicals in drinking water, provides health risk assessments of "toxic air contaminants," reviews health risk assessments of pesticides, and jointly regulates pesticide worker health and safety with the Department of Pesticide Regulation.

LAO 2005 Recommendation. The LAO in the *Analysis of the 2005-06 Budget Act* found that OEHHA provides support to various regulatory programs in its sister Cal-EPA departments, as well as to the safe drinking water program in the Department of Health Services (DHS). For example, OEHHA's statutory mandate to evaluate how well the state's air quality standards protect children and other populations particularly susceptible to air pollution serves to guide the Air Resources Board's regulatory activities.

In those cases where OEHHA's activities can be directly and reasonably connected with a regulatory program, the Legislature is presented with an opportunity to consider potential fund source alternatives to the General Fund—namely fee-based special funds—to support the activities. Using fee-based revenues instead of the General Fund is appropriate because many of OEHHA's activities provide a scientific basis for environmental permit requirements, thereby preventing the requirements placed on permittees from being arbitrary or unduly burdensome. As such, OEHHA's activities provide a benefit to the permit holder and therefore are appropriately funded through regulatory program fees.

On the other hand, some of OEHHA's activities—such as its Proposition 65 program—have more of a broad-based public health focus and cannot be reasonably connected with discrete regulatory programs. For activities such as these, the LAO thinks that the General Fund continues to be the appropriate funding source.

Staff Recommendation. Staff recommends that the Subcommittee request the LAO to present on possible ways to increase alternative funding for OEHHA that could allow General Fund for the department to be reduced.

Action: Held open